

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-141288-15

Date:

September 26, 2016

In Re:

TY:

Legend

Taxpayer =

Accounting Firm =

Parent =

Member 1 =

Member 2 =

Member 3 =

Cooperative =

Patron 1 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter dated December 10, 2015, as supplemented by a letter dated June 20, 2016, submitted by Accounting Firm requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC") for Taxpayer's first taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Accounting Firm, and accompanied by penalties of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. They are subject to verification on examination.

FACTS

Taxpayer is a domestic corporation owned by Parent. Taxpayer was incorporated on Date 1 and was intended to be treated as an interest charge domestic international sales corporation ("IC-DISC") from inception. Parent is a domestic limited liability company that was owned by Member 1, Member 2, and Member 3 as of Date 1. Taxpayer sells through Cooperative, which pays commissions to Taxpayer. Cooperative is an agricultural cooperative that is subject to the provisions of subchapter T of the Internal Revenue Code ("Code"). Cooperative was owned by Patron 1, Member 2, and Member 3 as of Date 1. Patron 1 is 100% owned by Member 1 and Member 1's affiliated corporation.

Parent relied on Accounting Firm to arrange for Taxpayer to qualify as an IC-DISC, including, but not limited to, the preparation and filing of Form 4876-A. Due to an apparent misunderstanding, while Accounting Firm prepared the Form 4876-A and sent it to Taxpayer, Taxpayer never filed the Form 4876-A.

On or before Date 2, Taxpayer's Form 1120-IC-DISC ("Interest Charge Domestic International Sales Corporation Return") was filed for its first taxable year ended Date 3. Taxpayer later received correspondence from the Service stating that it was unable to process the Form 1120-IC-DISC because Taxpayer did not have a Form 4876-A on file with the Service.

Accounting Firm submitted this request for relief on behalf of Taxpayer under Treas. Reg. § 301.9100-3 for an extension of time to file Form 4876-A effective Date 1.

LAW AND ANALYSIS

Section 992(b)(1)(A) of the Code provides that an election by a corporation to be treated as a DISC¹ shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) of the Code provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in relevant part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be

¹ As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extension of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is in fact eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). For example, we have not attempted to determine whether Cooperative would have sufficient combined taxable income (within the meaning of section 994(a)(2) and (b)(2) and the regulations thereunder) with respect to which commissions properly payable to Taxpayer could be calculated, given the rules described in section 1382(b) (a cooperative's taxable income does not take into account amounts paid that are patronage dividends or per-unit retains) and (c) (when determining taxable income, there is an allowable deduction for non-patronage distributions). Taxpayer should attach a copy of this ruling letter to its Form 4876-A and Federal income tax return for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, this letter does not express or imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Christopher J. Bello
Branch Chief
Office of Associate Chief Counsel (International)
Branch 6

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: